

Personnel Policy 2100, “Grievance Procedure”

Optional Grievance Panel Review Guidelines

Personnel Policy 2100, “Grievance Procedure,” provides eligible employees the option of having a panel of MoDOT employees assembled to review certain grievances from all district and Central Office locations.

This document outlines additional process related criteria, steps, etc., not addressed in Policy 2100.

Eligibility for Panel Review

This option will not be available to any employee exempted from Personnel Policy 2100, such as seasonal and other wage employees, attorneys, district engineers, division directors, and state engineers. A grievance panel will not review grievances related to certain actions otherwise grievable under Personnel Policy 2100, including but not limited to:

- terminations;
- fit for duty reviews;
- results of employment physicals (including work simulation);
- requests for accommodation under the Americans with Disabilities Act;
- denials of ShareLeave requests; and
- reviews or appeals of drug or alcohol test testing process or results.

There may be other types of grievances filed where it is necessary to determine that it not appropriate for a panel to review the grievance. However, to help ensure a successful process, the Human Resources Division-Central Office (HR-CO) will try to make the process open to as many grievances as possible. A panel will not review harassment, including sexual, racial, or other harassment, or Equal Employment Opportunity complaints (i.e., complaints alleging a protected category as a reason for the complained of action or omission).

The existence of this statewide panel process to review employee grievances, at an employee’s option, does not change the items that cannot be grieved under current department policy. Consistent with current policies, required drug tests, job evaluation studies, and salary inequity issues are not grievable under existing procedures and are not eligible for panel review. Appeals of MAPS ratings also must continue to be handled in accordance with the dispute resolution process under Personnel Policy 6506, “Performance Evaluation.” If an employee chooses to directly appeal to the Audits and Investigations Division as allowed under Personnel Policy 2100 for discipline above a written warning, a panel review will not be available.

Scope of Panel Review

It is important that employees understand in advance the scope of information a grievance panel has authority to review. By submitting to the optional panel review process, a panel has

authorization to review the following types of information related to the employee filing the grievance:

- information related to the employee that might be provided by the employee's supervisor, human resources manager, or other relevant or involved person;
- MAPS forms and other documentation contained in the employee's personnel or performance management file;
- prior disciplinary historical documentation; and
- previous disciplinary letters.

A grievance panel does not have authorization to access medical related information regarding any employee. During the process of a panel review, HR-CO may need to redact (i.e., black-out) information from any document that it deems sensitive or that would have no value in the review process.

A panel does not have the authority to substitute its judgment for that of the decision-maker at issue in the grievance or overturn any decisions. A panel will review information, ask questions of necessary individuals, review and determine whether policies were followed, determine whether needed waivers were properly obtained, or determine whether there was a legitimate business reason for the decision. A panel is responsible for providing a recommendation to the district engineer/division leader as to whether or not they believe the decision is supported by the information reviewed or obtained during the panel review process.

Panel Composition

A grievance panel will be composed of five (5) employees selected by a panel coordinator from HR-CO, who will oversee panel selection and will facilitate panel meetings. The panel coordinator will solicit names of employees to serve on each panel on a case-by-case basis. The panel coordinator will utilize the Employee Advisory Council and various district or division representatives to obtain names of potential panel members. Each panel will be composed of one (1) employee each from the following groups:

- manager;
- supervisor;
- non-supervisory employee holding the position of maintenance crew leader;
- non-supervisory dues-paying Union member in the maintenance worker career ladder series; and
- non-supervisory employee from a non-maintenance job classification.

The panel coordinator will ensure each panel is selected to ensure there are no potential conflicts based on the presence of commonalities with the employee who filed the grievance such as having the same job location or reporting to the same supervisor.

Panel Responsibilities

Panel members are required to review grievance related information in preparation for panel meetings, attend and participate in scheduled panel meetings, and to take all necessary precautions to ensure employee confidentiality is maintained. A panel will retain confidentiality

of all information learned in the panel process as well as its recommendation and the basis for same, during and after the process is complete. In some cases, the panel coordinator may need to have follow-up conversations with employees regarding information provided to the panel by the grievant. Following the panel meeting, all documentation shared with panel members will be collected and retained by HR-CO. Panel meeting documentation may be shared with the Audits and Investigation Division should the grievance advance to further steps in the process.

Panel members will be required to sign a confidentiality statement indicating that disclosing confidential information to unauthorized organizations or individuals will be subject to disciplinary action, up to and including termination, and when in violation of applicable state and federal laws, may be subject to fine and/or imprisonment.

Employee Responsibilities

An employee submitting to the panel review process will be required to provide grievance documentation (including response from Step 1 of the grievance process) to the panel coordinator in advance of the grievance panel meeting, attend the panel meeting in person or video/audio conference, and answer questions asked by panel members.

The employee has the option of having another person of his/her choice (which could be a union representative for the certified bargaining unit) present at the panel review meeting. This individual will not be allowed to represent the employee, including providing legal counsel; however, he/she may ask brief clarifying questions as long as such participation is not disruptive to the process. If the individual's participation is not limited to what is outlined in this document and Personnel Policy 2100, the individual will be asked to leave the panel meeting, and the panel meeting will proceed without that person.

Frequency of Meetings

After receiving a request for a panel review, the panel coordinator in HR-CO will begin to assemble a panel. Following the selection of a panel, the employee filing the grievance will be notified of the panel meeting date.

Process Overview

As outlined in Personnel Policy 2100, within 30 calendar days of the act or occurrence that is the basis for the grievance, an employee must submit a grievance in writing to the local human resources manager. Within five workdays of receipt, the local human resources manager will facilitate a meeting, with the employee and the decision-maker at issue in the grievance, to discuss the employee's issues submitted in the written grievance. Within five workdays after the meeting, a written reply will be presented to the employee. This will complete the first step of the grievance process.

If an employee is not satisfied with the outcome following the first step of the grievance process, he/she will have two options available to him/her at the second step. In order to take advantage of either option, the employee must contact the appropriate individual noted below within five workdays after receiving a reply signifying completion of the first step.

- If the employee does not elect to pursue a panel review, the employee must forward the grievance to his/her district engineer/division leader. This option is a current process in Personnel Policy 2100 and is described in greater detail within that policy.
- If the employee elects to pursue a panel review, the employee must forward grievance documentation (including response from Step 1) to the Human Resources Director – Central Office (HR Director-CO), who will assign a panel coordinator within HR-CO.

If an employee elects to pursue a panel review and notifies the HR Director-CO as noted above, the following steps will be taken:

- The HR Director-CO will assign a panel coordinator within HR-CO.
- The panel coordinator will contact the grievant and the district engineer or division leader to inform them a grievance panel will be selected.
- The panel coordinator will select an appropriate group of employees to form the grievance panel for the submitted panel review request.
- The panel coordinator will schedule a meeting between the employee and the panel for the employee to appear before the panel to provide information and answer questions as necessary. In some cases, the panel coordinator may need to have follow-up conversations with employees, including the immediate supervisor or decision-maker at issue in the grievance, regarding information provided to the panel by the grievant.
- The panel coordinator will forward all necessary information to panel members.
- Within five workdays following the panel meeting, the panel coordinator will provide the district engineer or division leader with the panel's recommendation.
- Within ten workdays following receipt of the panel's recommendation, the district engineer or division leader (or designee) will meet with the employee to discuss his/her decision and to provide a written reply to the employee.

If an employee is not satisfied with the outcome at the second step of this process, the remaining steps available to him/her within the grievance process are outlined in Personnel Policy 2100.

Potential Outcomes and Communication of Findings

Grievances reviewed by a panel will result in one of the following recommendations:

- the panel supports the decision made at the first step; or
- the district engineer or division leader should review the decision to determine whether a different course of action is appropriate.

A grievance panel is a fact-reviewing panel and has not been granted greater authority than the authority of the district engineer or division leader. As a result, a panel does not have the authority to:

- change discipline;
- overturn promotion decisions; or
- grant any other remedies requested by the employee filing the grievance.